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March 12, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 20, 2006

Case Number: TSO-0417

This decision concerns the eligibility of XXXXXXXXXXXX ("the Individual") for continued access authorization. This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's suspended access authorization should be restored. For the reasons detailed below, it is my decision that the Individual's access authorization should not be restored at this time.

I. BACKGROUND

The Individual has been employed at a DOE facility in a position that requires him to hold an access authorization. In December 2005, the Individual was arrested for Driving Under the Influence (DUI). DOE Ex. 6 The Individual had several prior alcohol-related incidents known to the DOE, including three charges of Driving While Intoxicated (DWI) in 1976, 1979, and 1998. *Id.* The Individual reported his December 2005 DUI to DOE within days of his arrest. *Id.* The Individual was the subject of a Personnel Security Interview (PSI) in December 2005. During the PSI, the Individual discussed his December 2005 arrest and his alcohol use in general. DOE Ex. 27. At the time of the PSI, the Individual believed he did not have an alcohol problem, but recognized that his history of alcohol-related incidents could indicate otherwise. *Id.*

Because the PSI did not resolve the security concerns raised by the Individual's alcohol use, the Individual was referred to a DOE consultant-psychiatrist ("the Psychiatrist") for an evaluation. DOE Ex. 6. The Psychiatrist interviewed the Individual in March 2006. DOE Ex. 14. Following his evaluation of the Individual's file and the interview, the Psychiatrist issued a report in March 2006. *Id.*

In his report, the Psychiatrist determined that the Individual had been a user of alcohol habitually to excess from 1973-1998, 2000-2003, and 2004-2005, and that the Individual met the criteria for "Alcohol Abuse" set forth in the Diagnostic and Statistical Manual 4th Ed., Text Revision, published by the American Psychiatric Association (the DSM-IV-TR). The Psychiatrist also determined that the Individual's alcohol abuse was an illness which "causes, or may cause, a significant defect in [the Individual's] judgment or reliability, at least until such time as he is

showing adequate evidence of rehabilitation or reformation.” *Id.* The Psychiatrist found that at the time of his interview the Individual was not yet showing adequate evidence of rehabilitation or reformation. The Psychiatrist concluded that as adequate evidence of rehabilitation or reformation, the Individual needed to demonstrate complete abstinence from alcohol and attendance at AA or a similar program for at least two years. *Id.*

In May 2006, the DOE notified the Individual that his various alcohol-related problems and the Psychiatrist’s diagnosis that the Individual suffered from Alcohol Abuse created security concerns under 10 C.F.R. § 710.8(h) and (j). (Criteria H and J). Notification Letter, May 17, 2006. Upon receipt of the Notification Letter, the Individual requested a hearing in this matter. *See* Individual’s Letter, June 14, 2006. The DOE forwarded the request to the Office of Hearings and Appeals (OHA). The OHA Director appointed me to serve as the hearing officer.

A hearing was held in this matter. Both the Individual and the DOE counsel submitted documents. At the hearing, the Individual, represented by counsel, presented his own testimony as well as the testimony of his Alcoholics Anonymous (AA) sponsor, an AA colleague, and a friend to support his position that he was reformed and rehabilitated from his alcohol problem. The DOE counsel presented the testimony of one witness: the Psychiatrist.

II. THE HEARING

A. The Individual

The Individual stated that he has been abstinent from alcohol since the day after his DUI arrest in December 2005. Transcript (“Tr.”) at 108. The Individual stated that on the day of the arrest he reported himself to the Employee Assistance Program (EAP) at his site and met with an EAP counselor a few days later. Tr. at 139-140. The Individual added that he began an intensive outpatient treatment program (IOTP) to address his alcohol problem within a few weeks of his meeting with the EAP counselor.¹ *Id.*

The Individual testified that he began attending AA meetings shortly after his December 2005 arrest. Tr. at 109-110. According to the Individual, he had attended nearly 200 meetings as of the date of the hearing.² Tr. at 125. The Individual spoke positively about his experience with AA. Tr. at 130-133. He stated,

Being grounded in this 12-step program has set my psyche . . . quite well. Not only did it give me terms and descriptions of conditions of how . . . I got to where I was, it also let me know that I was spared a considerable amount of physical deterioration and mental loss of capacity and so on. I was able to catch what was wrong with me early. I’ve read stories and actually seen it – seen the

¹ The Individual submitted a copy of the IOTP substance abuse assessment and program notes. The document is included in the record as “Indiv. Ex. H.”

² The Individual submitted an exhibit documenting his attendance at 40 AA meetings from February 11, 2006 to April 19, 2006. That exhibit is marked “Indiv. Ex. B.” He stated that he did not document his attendance at every meeting. He stated that he attended about ten meetings prior to February and attended about four meetings per week from April 2006 to December 2006. Tr. at 124-125.

effects of alcohol and alcoholism, and I've been spared a considerable amount of pain and suffering.

Tr. at 130. The Individual testified that he was on the fourth step of the 12-step AA program. Tr. at 132. When asked whether he believed he needed support groups around him to remain sober, the Individual replied, "I think it's a need and a want and a desire." Tr. at 131. The Individual added that he believed he would continue attending AA for the rest of his life. Tr. at 125.

The Individual stated that he realized when he was arrested in December 2005 that he had a problem with alcohol, but was not able to admit it openly until after he attended a few AA meetings. Tr. at 128-129. According to the Individual, he evaluated his life and made several changes. He stated,

I guess what I've learned is . . . I've let a wife and four children, and now five children and another woman, down, and it had everything to do with the state of mind, with the ways I think, and to change that, not only have I removed myself physically from my old lies, my old hang-outs, there was also the past to think about, things to learn and change from the past, change thought processes

Tr. at 123. The Individual testified that he no longer has any alcohol in his home. Tr. at 116-117. He stated that he recently began attending church and has other hobbies including bike riding, working out, and pursuing his hunting guide license in order to work for a friend's business. Tr. at 119-120. The Individual added that when his driver's license was suspended as a result of the December 2005 DUI, he used his bicycle as his primary mode of transportation: "I chose not to be a burden to anybody, because . . . I was the one that had gotten in trouble[.]" Tr. at 114. The Individual described his typical week. He stated that he works an eight-hour day, five days a week. He generally works out before work and picks up his young son from day care after work and is with him for one to two hours. On the weekends, he sometimes has his son with him. On weekends that he does not have his son, he often goes hiking, visits his mother and brother, and works on his cars. Tr. at 141-143. The Individual also stated that he completed an online degree program and attained a Bachelor of Science in Business Administration. Tr. at 112. He added that the program was "pretty intense" and that he completed it in 22 months.³ *Id.*

The Individual stated that in the past he would sometimes deal with stressful situations by turning to alcohol. Tr. at 143. Now, however, he stated that he calls his sponsor or someone else on his call list. He added, "there is always somebody I can talk to." *Id.* He stated that he did not have cravings for alcohol, but called his sponsor or someone else on his list "more to get stuff off my chest." *Id.* He stated that speaking with his sponsor when faced with a stressful situation helps him "just take some time out and take a step back and get a perspective on it and understand how to deal with it." *Id.* The Individual stated that he had dealt with stressful incidents over the past year – he finalized his divorce from his wife after a long separation and he separated from the mother of his youngest child – but he "didn't drink over it." Tr. at 134-135.

³ The Individual submitted a copy of his degree and his college transcript. They are marked "Indiv. Ex. D" and "Indiv. Ex. C" respectively.

Finally, the Individual discussed whether he had any periods of sustained abstinence from alcohol aside from December 2005 to the present. He stated that, following his 1998 DWI, a requirement of his probation was that he not drink any alcohol for one year and he did not drink at all during that time. Tr. at 141. The Individual concluded by saying that he intended to never drink alcohol again and to continue attending AA meetings. Tr. at 144.

B. The AA Sponsor

The Individual's sponsor stated that he had been in AA for approximately 19 years and had sponsored several people. Tr. at 96, 104. He stated that the Individual generally attends a minimum of three meetings per week and contacts him three to five times per week. Tr. at 97. The sponsor stated that he was working with the Individual on the AA program's 12 steps and that the Individual was on the fourth step. Tr. at 98. The sponsor added that he and the Individual attend meetings together and spend approximately three to four hours per week together. Tr. at 99-100.

The sponsor discussed the Individual's participation in the AA program. According to the sponsor,

[The Individual] is participating pretty strongly in this program right now, because he is expressing his desire to overcome this disease we call alcoholism, and has realized that unless he does focus on this that his . . . chances aren't really good, and I see [him] putting forth a considerable effort . . .

Tr. at 100. The sponsor stated that the Individual had a strong commitment "towards sobriety, getting ahead, refraining from drinking." Tr. at 105. The sponsor added that the Individual actively participates in AA meetings: "He shares openly and honestly about where he's at with his sobriety and what's . . . occurring in his life, which is . . . a demonstration of honesty, open-mindedness, and willingness that we suggest is required for recovery." Tr. at 106.

C. The AA Colleague

The Individual's AA colleague testified that she has been in AA for about 27 years. She stated that she and the Individual worked together briefly in 2004, but that she got to know him better when he joined AA. Tr. at 43-45. She stated that she goes to AA meetings about twice a week and usually sees the Individual at those meetings. Tr. at 45. The AA colleague stated that she saw a transformation in the Individual: "I watched [him] go through what we call the journey from the head to the heart . . . I watched him go from being [at AA] because he had to, to being there because he wanted to be[.]" Tr. at 47. She stated that the Individual actively participated in AA. She stated, "he was really open. He talked to a lot of people. He shared a lot. He participated . . . he was there every night for a long time. Tr. at 48. The AA colleague stated that the Individual understood the program and its value fairly early in his recovery, "maybe in January, February [2006] . . . there was a day where he got it and he changed. He became willing to ask for a sponsor, he became willing to start the steps, he became willing to do the work . . . and he accepted that he was the problem." Tr. at 52-53. She stated that she was confident that the Individual would not resume drinking alcohol "because he's willing to listen to

what other people tell him.” Tr. at 53. She stated that the Individual discussed with her “his own personal journey from going [to AA] because he had to, to going because he wanted to” and she believed he would not start drinking again or stop going to meetings. Tr. at 63, 65-66. The AA colleague added that the Individual had replaced drinking with bike riding, schoolwork, and AA. Tr. at 55. She stated that the Individual had also been attending church. Tr. at 68.

D. The Individual’s Friend

The Individual’s friend stated that he met the Individual at work and has known him for about 12 years. Tr. at 72. He added that the Individual was his roommate for a short time after the Individual’s divorce. Tr. at 73. The friend stated that the Individual enjoys the outdoors and that his hobbies include camping, hunting and fishing. Tr. at 74. He stated that he drank with the Individual in the past and that in his opinion the Individual “drank too much.” Tr. at 74. He stated that the Individual was not always intoxicated, but that he was a “consistent drinker.” Tr. at 75. The friend added that he had seen the Individual drink to excess three to four times. The friend stated that after the Individual’s December 2005 DUI arrest, the Individual told him that he was going to quit drinking and go to AA. He stated, “what I got out of the conversation is he was going to AA not because the court had required him to, because he said I am going to straighten up my life.” Tr. at 92. The friend stated that he sees the Individual about once a month and that he has observed a change in the Individual’s behavior. Tr. at 77, 79. According to the friend, the Individual now takes things more seriously and is “very straight, matter-of-fact.” Tr. at 79. The friend stated that there have been instances where the Individual has turned down invitations to places or events where alcohol would be present. Tr. 85. He added that the last time he saw the Individual he offered the Individual a beer to gauge his reaction and the Individual turned it down. Tr. at 77. The friend concluded by saying that he trusted the Individual and that, in his opinion, “it’s an amazing transformation as far as where he was and where he is today.” Tr. at 84, 85.

D. The Psychiatrist

The Psychiatrist testified regarding his March 2006 evaluation of the Individual. The Psychiatrist stated that he diagnosed the Individual with alcohol abuse because he had “approximately seven alcohol-related legal problems over a 30-year period, including 3 DUIs,” meeting criterion A3 for substance abuse in the DSM-IV-TR.⁴ Tr. at 13-14. He added that it was significant that the Individual’s last alcohol-related legal problem, the December 2005 DUI arrest, occurred four months after the Individual was interviewed by an investigator from the Office of Personnel Management (OPM). The Psychiatrist stated, “He had an interview, and a lot of it concentrated on alcohol . . . he was interviewed in August of [2005] and four months later...he has his next DUI . . . and in that interview he’s saying that . . . he doesn’t drink excessively, he limits his drinking.” Tr. at 14-15. The Psychiatrist stated that at the time of his

⁴ The Psychiatrist stated that Criterion A3 says, “recurrent substance-related legal problems over a 12-month period.” According to the Psychiatrist, “technically, [the Individual] doesn’t have recurrent substance-related legal problems over a 12-month period” but that the DSM-IV is “in some way a guideline or [a set of] principles to be informed by common sense and clinical judgment.” The Psychiatrist stated that, in his opinion, “seven alcohol-related legal problems over a 30-year period...is even more significant than two alcohol-related legal problems over a 12-month period.” Tr. at 14.

interview with the Individual, the Individual “was getting more insight that this is a problem.” Tr. at 17. He added, “I think at the point I was seeing him, he was agreeing that alcohol was interfering with his family, his job and his career, and it was creating a problem for him.” Tr. at 19.

The Psychiatrist stated that the Individual was beginning to show evidence of rehabilitation or reformation – he had been abstinent from alcohol for four months and was starting to go to AA – but that it was not yet adequate. Tr. at 17-18. The Psychiatrist stated that he made his recommendations for steps the Individual should take to demonstrate adequate evidence of rehabilitation and/or reformation, including total abstinence from drinking alcohol and attending AA or a similar program for at least two years. Tr. at 21-23. According to the Psychiatrist, he based his recommendations on the results of studies of AA participants and his own extensive experience. Tr. at 24-25.

After listening to the testimony of the Individual and the other witnesses at the hearing, the Psychiatrist testified again. He stated that he had not changed his opinion regarding whether the Individual had demonstrated adequate evidence of rehabilitation or reformation. Tr. at 145. He stated that the Individual was showing evidence of rehabilitation or reformation, but in his opinion, “it’s not adequate for me to be able to make an opinion that [the Individual’s] risk of relapse in the next five years is low, which to me, is ten percent or less.” *Id.* The Psychiatrist stated that time was a factor, as well as the fact that the Individual was “really only through a third of the 12 steps. That’s a big factor.” *Id.* The Psychiatrist stated that although he had not changed his opinion regarding his recommendation that the Individual have two years of sobriety, he did believe the Individual was “on the right track.” Tr. at 146. The Psychiatrist added, “I think he’s doing all the right things and he’s on the right path.” Tr. at 147.

III. STANDARD OF REVIEW

The regulations governing the Individual’s eligibility for an access authorization, also referred to as a security clearance, are set forth in 10 C.F.R. Part 710, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” An individual is eligible for access authorization if such authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id.* See generally *Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

Under Part 710, the DOE may suspend an individual’s access authorization where “information is received that raises a question concerning an individual’s continued access authorization eligibility.” 10 C.F.R. § 710.10(a). Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. Once a security concern is raised, the individual has the burden to bring forward sufficient evidence to resolve the concern.

In considering whether an individual has resolved a security concern, the hearing officer considers various factors, including the nature of the conduct at issue, the frequency or recency

of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. Id. § 710.7(c). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. Id. § 710.7(a). In order to reach a favorable decision, the hearing officer must find that “the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest.” Id. § 710.27(a).

IV. ANALYSIS

A. The Security Concerns

The derogatory information concerning Criteria H and J centers on the Individual’s alcohol use and the Psychiatrist’s diagnosis of Alcohol Abuse. Criterion H concerns conduct tending to show that the Individual has “an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Criterion J concerns conduct indicating that the Individual has “been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j). Given the Individual’s well-documented problem with alcohol and the Psychiatrist’s diagnosis that the Individual suffered from Alcohol Abuse, the local security office had more than sufficient grounds to invoke Criteria H and J. Thus, the only issue to be resolved is whether these security concerns have been adequately mitigated.

B. Mitigating Factors

The Individual acknowledged at the hearing that he had an alcohol problem and stated that he was working to address it. He testified that he was abstinent from alcohol for 13 months as of the date of the hearing. However, the evidence on this point is relatively thin. While I believe that the Individual testified candidly regarding his abstinence date and his future intentions to remain abstinent from alcohol and continue participating in AA, he did not present the testimony of witnesses who interact with him frequently enough to corroborate how he spends his time away from work and AA. The witnesses at the hearing testified as to what the Individual told them regarding his abstinence date and his commitment to his sobriety and the AA program. While that testimony is certainly relevant, it sheds little light on how the Individual spends his time away from work or AA and whether he has indeed been abstinent from alcohol. More helpful witnesses would have included the mother of the Individual’s son because, although the recently separated, he lived with her during a large portion of his claimed abstinence period and has frequent contact with her. Other relevant witnesses would have been family members with whom the Individual spends time or other friends who interact with the Individual socially.

Despite the shortage of corroborating testimony, I am impressed by the steps the Individual has taken to address his alcohol problem since December 2005. The Individual reported his December 2005 DUI arrest in a timely manner and subsequently reported himself to the site’s EAP for assistance. He followed the EAP counselor’s recommendations and enrolled in an IOTP and began attending AA meetings. According to the Individual, he has made several

significant changes he in his life, including becoming actively involved in AA, exploring new hobbies and more recently becoming involved with a new church. Additionally, the Psychiatrist was optimistic about the steps the Individual has taken to address his alcohol problem. Based on the testimony at the hearing and my own impressions of the Individual, I believe that he is showing substantial progress in addressing his alcohol problem.

I am unable to find, however, that there is sufficient evidence in the record at this time to mitigate the Criteria H and J concerns. My position is based on the Individual's well-documented alcohol-related legal problems spanning more than 30 years, his return to drinking alcohol following a prior one-year period of abstinence after his 1998 DWI arrest, and the lack of corroborating evidence regarding the Individual's current habits. Even assuming that the Individual's claimed period of abstinence is accurate, given the Individual's history, I am not convinced that the period of abstinence and treatment is sufficient to mitigate the security concerns in this case. In that regard, I agree with the Psychiatrist's testimony that this period of abstinence is not yet sufficient to show adequate rehabilitation or reformation.

As the foregoing indicates, the security concerns set forth in the Notification Letter under Criteria H and J regarding the Individual's alcohol use have not been adequately mitigated. Accordingly, I believe that it would not be appropriate to restore the individual's access authorization at this time.

V. CONCLUSION

Upon consideration of the record in this case, I find that there was evidence that raised a doubt regarding the Individual's eligibility for a security clearance under Criteria H and J. I also find insufficient evidence in the record to fully resolve the concerns raised under Criteria H and J. Therefore, I cannot conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I conclude that the Individual's access authorization should not be restored at this time.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Diane DeMoura
Hearing Officer
Office of Hearings and Appeals

Date: March 12, 2007